

(2002) 05 AHC CK 0030
In the Allahabad High Court
Case No : C.M.W.P. No. 39223 of 2001

Udhum Singh and Others

APPELLANT

Vs

Central Administrative Tribunal, Allahabad Bench and Others

RESPONDENT

Date of Decision : 22-05-2002

Acts Referred:

Administrative Tribunals Act, 1985 — Section 10

Citation : (2002) 3 AWC 2163 : (2002) 94 FLR 304 : (2002) 2 UPLBEC 1765

Hon'ble Judges : Rakesh Tiwari, J;M. Katju, J

Bench : Division Bench

Advocate : V.P. Shukla and Bhagwati Prasad, for the Appellant; Deepak Verma and S.C., for the Respondent

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard Sri V. P. Shukla and Sri Bhagwati Prasad, learned counsel for the petitioners and Sri Deepak Verma, learned counsel for the respondents and the learned Standing Counsel.

2. This writ petition has been filed challenging the order dated 29.8.2001 passed in Contempt Petition No. 88 of 2001 and the order dated 17.9.2001 passed in Review Application No. 75 of 2001, both arising out of O.A. No. 1113 of 1998. Copies of these orders have been annexed as Annexures-1 and 2 to the writ petition.

3. The brief facts giving rise to this petition are that the petitioners were engaged by the Deputy Director Military Farms to work as casual labourers in various years from 1989 to 1990. The details of each applicant in this regard is extracted hereunder for ready reference :

Name

Date of employment

Department in which working

1.

Udhum Singh

1.10.1989

Cultivation & Cattleyard

2.

Awadh Narain

1990

Cultivation & Cattleyard

3.

Cyan Singh

October.1990

Cattleyard.

4.

Krishna Prasad

1989

Cattleyard & Dairy

5.

Moti

1989

Cultivation & Dairy

6.

Chunnu Lal

1989

Cultivation.

4. All these casual labourers have been granted temporary status with effect from January, 1996. The terms and conditions of service of the casual labourers are governed by Model Standing Orders issued on 23.3.1982. According to Clause 15 of the Model Standing Orders, a casual workman who has completed six months of continuous service in the same establishment or under the same employer, is to be brought on the regular strength of the establishment. All the aforesaid persons have completed their continuous service for more than six months. Thereafter the Department of Personnel and Training further issued

review policy regarding the recruitment of casual workers on 7.6.1988. According to this policy, a casual employee possessing experience of minimum two years casual service in the office/ establishment would be eligible for regularisation. The Army Headquarters further issued instructions in November, 1995 laying down the terms and conditions of casual industrial and non-industrial employees. These instructions provide that in cases where casual workers cannot be regularised for want of regular posts, they be given temporary status. It also provides that all casual labourers who are in service as on 1.9.1993 and have been in service for the last one year completing 240 days as on 1.9.1993 should be either regularised or granted temporary status. All the petitioners have been given temporary status and they are now only to be regularised. They possessed eligibility conditions prescribed for conferring temporary status.

5. The instructions regarding conferment of temporary status were further clarified on 29.1.1998 wherein it was provided that temporary status could only be conferred upon such employee who were in service as on 10.9.1993 and had completed 206 days.

6. By a Circular dated 23.6.1998 Annexure-7 to the writ petition, it was further provided that no casual labourers against regular vacancy be retained after 15.6.1998.

7. In the aforesaid background, respondents No. 4 and 5 instead of regularising the services of the petitioners, evolved and adopted engagement of workers through contract labour system and without Issuing any letter/notice directed the petitioners to take payment from the contractor directly. According to the petitioners this has been done in compliance of Annexure-7 to the writ petition. It is averred by the petitioners that the work performed by the petitioners is of a permanent nature, which is evident from the fact that all the petitioners are continuing since the date they were appointed without any break, No copy of the order has been supplied to them inspite of request made by them to respondent No. 5.

8, On 17.8.1998 the Hon"ble Supreme Court passed the following order :

"Application for impleading party and permission to place additional documents on record allowed.

Issue notice, pending further orders, the stay order passed on 5.8.1998 shall operate."

9. It has been submitted that the petitioners were senior in the seniority list, but due to the fault of the department, they were left from regularisation ; whereas the respondents are trying to regularise the services of certain persons who are Junior to the petitioners only to change the placement of the petitioners. The seniority list was disturbed and realigned on 8.10.1998. It is also stated that the petitioners have not been paid bonus due to them and are being denied their monthly salary so that the petitioner may succumb to the pressure to agree to

work under the Contractor contrary to the policy as well as the existing status.

10. In the above background, the petitioners approached the Central Administrative Tribunal Allahabad Bench. Allahabad by means of Original Application No. 1113 of 1998 with the prayer to quash the action of the respondents in resorting to make appointments through the Contractor and to regularise the services of the petitioners after seeking sanction from the competent authority.

11. Another O.A. No. 948 of 1999 was also filed by Chandan Singh and three others, some of whom are Junior to the petitioner on the same grounds and for the same reliefs. The only distinction was that in O.A. No. 1113 of 1998, the petitioners have claimed for regularisation of their services and quashing of the action of taking casual labourers through the Contractors ; whereas in O.A. No. 948 of 1999, the prayer was the same in addition to the prayer for quashing the order of oral termination. The prayer for quashing the oral termination was also taken by the petitioners by way of a supplementary affidavit filed in O.A. No. 1113 of 1998.

12. The Central Administrative Tribunal passed an order on 28.11.2000 in O.A. No. 1113 of 1998 as well as in O.A. No. 948 of 1999 and the true copies of the orders passed by the Central Administrative Tribunal in both the cases are Annexures-8 and 9 to the writ petition.

13. The grievance of the petitioners is that contradictory orders have been passed by the Tribunal on the same facts and the circumstances of the case. It has been argued that the petitioners in both the claim applications belong to same Military Farm. Allahabad, but the Tribunal erred in holding/ substituting a rider in the operative portion of the order in O.A. No. 1113 of 1998 "whenever the Job is available". The operative portion of the judgment in O.A. No. 1113 of 1998 and in O.A. No. 948 of 1999 are being quoted below ;

"The application is allowed and the oral termination is set aside. The respondents are directed to provide job to the applicants as casual labourers whenever work is available and to consider the case of the applicants for regularisation within a period of four months in the light of the order dated 15.12.1998. There will be no order as to costs.

The application is accordingly allowed. The oral termination is set aside. The respondents are directed to take back the applicants in job. However, applicants will not be entitled for any back wages. The respondents shall consider the claim of the applicants for regularisation under the order dated 15.12.1998 (Annexure-11) within a period of four months from the date a copy of this order is filed. No order as to costs."

14. Since there was specific direction of setting aside the oral termination as well as for taking action for regularisation of the petitioners within a period of four months, the petitioners could wait for proper action by the respondents but when

nothing happened, they filed the Contempt Application No. 88 of 2001 on 27.7.2001, which came before the learned Tribunal on 29.8.2001 and the learned Tribunal was pleased to dismiss the contempt application relying upon the phraseology of its order which shows that although oral termination was set aside, the respondents were directed to provide job to the petitioners as casual labourers whenever work is available and to consider the case of regularisation of the petitioners.

15. The plea taken by the respondents was that they do not have vacancy and, therefore, it was difficult for them to absorb the petitioners and when the job is available, they will be provided. A letter to this effect dated 19.7.2001 has been annexed as Annexure-10 to the writ petition.

16. By means of review application, the learned Tribunal's attention was drawn towards the order passed in O.A. No. 948 of 1999 In which it was directed that the applicants of that application shall be provided the job but the learned Tribunal in the petitioner's case has passed a different order although the facts in both the cases are identical.

17. The petitioner filed a Review Application No. 75 of 2001 against the judgment dated 28.11.2000 before the Tribunal claiming that there are contradictory judgments, although there are similar facts and circumstances and the same grounds in both cases. The review application was rejected vide order dated 17.9,2001. It is alleged that seniority list was drawn and junior persons to the petitioners were allowed to work.

18. Aggrieved by the aforesaid order, the petitioners have filed the present writ petition on the grounds that judicial propriety and judicial discipline demands uniformity in passing judgments, but the Tribunal has not considered this fact and hence the order dated 29.8.2001 was wrongly passed.

19. The respondents have filed counter-affidavit and have stated that the reliefs sought in the cases are different.

We are of opinion that the reliefs sought are substantially the same, but in any case that will make no difference. The Court can always mould the relief.

20. We have considered the arguments of the petitioners and the operative portion of the judgment of the Central Administrative Tribunal dated 28.8.2001 passed in O.A. No. 1113 of 1998 and O.A. No. 948 of 1999 in similar facts and circumstances. The only grievance of the petitioners is that the operative portion of O.A. No. 1113 of 1998 should be in the same language as in O.A. No. 948 of 1999, without there being any rider about the employment on the availability of the job. We feel that in the interest of justice, keeping in view judicial propriety, the Tribunal ought to have passed the same order in both the cases as they are arising from the same facts and the circumstances of the case. The dispute is also of same employment.

21. The writ petition is hence allowed and the matter is remanded back to the

Tribunal to modify the order passed in O.A. No. 1113 of 1998 in the same terms and conditions as in O.A. No. 948 of 1999 in the light of the observations made in the body of this judgment. No order as to costs.